

FILED

Motion for
Reconsideration of
Judgement
NO C07-5085 JW

2007 DEC 10 P 4:27
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL. S.D.

Plaintiff Brings this Motion for Reconsideration in that plaintiffs due process rights are being violated.

1. Plaintiff has a Constitutional Right to a hearing before a administrative law Judge, the fact that plaintiff is currently confined is irrelevant. The notice sent to plaintiff on July 27-2007 clearly acknowledges plaintiffs current address of confinement. For the SSA to deny plaintiff this right, is a total violation of his due process rights. Social Security Act 404.46f clearly states that recipients are eligible to receive payment as prisoners if involved in a court approved rehabilitation center or program.

CDC is a Court approved
rehabilitation program. Also how
1 Could plaintiff had demonstrated
2 that he was not incarcerated
3 during the months that SSA states
4 he was incarcerated, if he can
5 not obtain a hearing in order
6 to do this. It is plaintiff
7 request that the Court reconsider
8 the judgement with respects to
9 newly discovered evidence. Plaintiff
10 can infer proof that he was
11 not convicted of a felony during
12 the months and years of Oct, Nov
13 DEC, 2001, but was convicted of
14 a Misdemeanor please see Exhibit # 7
15 90A.468 clearly states that no
16 benefits will be payable to a
17 person convicted of a felony, a
18 offense punishable by death or
19 imprisonment for a term exceeding
20 one year. It is also plaintiffs request
21 that the Court review the order
22 by the Honorable Richard Seeborg
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Expressing his acknowledgement of the SSA's stated remedy in the notice of reconsideration. 42 USC 405(g) and (7) clearly states that a claimant has a right to exhaust all his administrative remedies, reconsideration, administrative law judge hearing, review by the appeals council. These rights are in compliance with plaintiff's property rights protected by the 14th amendment. It is now plaintiff's request that the court review the facts, that if plaintiff was given the opportunity to present in a hearing, would've allowed plaintiff to prove his case, also would've allowed plaintiff to present his eligibility to receive benefits as a prisoner as stated in 42 USC 409.68. Once again it states in the court's November 30, 2007 order, that plaintiff has not alleged any facts that, if true, would entitle him to recovery of the returned checks, once again

Plaintiff had not the opportunity to present the Facts, that he can now present to the court. It clearly expresses in the Notice of Reconsideration that plaintiff could and would be able to present his Facts in the administrative law Judge hearing. Not in the initial notice of reconsideration. In the initial appeal plaintiff was requesting checks that were not even classified as overpayments, so why would he present evidence at this time during the administrative procedure? The appropriate, instructed way to present Facts that would entitle him to recovery, would have been during a hearing before an administrative law Judge. As there was simply no other way to present these Facts.

It is plaintiff's request that the Court Review *Elliott v. Weinberger*, CA. 9 Hawaii 564 F.2d 1219 (1977) where the Court found that due process requires a pre oral Recovery hearing, and it was enforced in this case. The SSA has denied plaintiff his due process right to a hearing. Also please review *Roth v Board of Regents* 408 US 564, 33 L Ed 2d 548, 92 S Ct 2701.

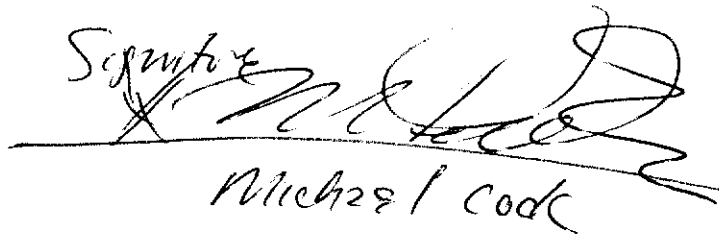
2. It is now plaintiff's request that the Court Reconsider the Judgment, and entertain the newly discovered evidence presented with this motion. Also that the Court grant plaintiff a Dismissal without prejudice, if the Court deems the evidence insufficient.

I Michael Cook hereby testify that the foregoing is true and correct and

Can hereby testify to this is called
~~the~~ Appear to do so.

Executed this 30th day of November-2007

Signature



Michael Code

Plaintiff would also like to include that Exhibit 3# clearly demonstrated that he is the owner of these instruments as these instruments have not been indorsed neither negotiated back to SSA, for the SSA, to withhold these instruments is a violation of plaintiff's due process rights and a breach of simple contract to pay funds. A owner of personal property has the exclusive right to possession and disposition of his or her property no matter the justice of his or her circumstances.

Description of Exhibits

Exhibit #1

Demonstrates where plaintiff was incarcerated for a misdemeanor offense. 42 USCA clearly states that no benefits will be paid to an individual who is confined for a felony offense.

Exhibit #2

An order from the Honorable Judge Richard Seeborg acknowledging plaintiff's right to a administrative hearing before a administrative law judge, also acknowledging that the notice clearly stated a right to this remedy.

Exhibit #3

The notice of ~~exp~~ reconsideration clearly acknowledging payments returned, that were not overpayments. Then a total deprivation without due process by an SSA employee.

Exhibit # 9

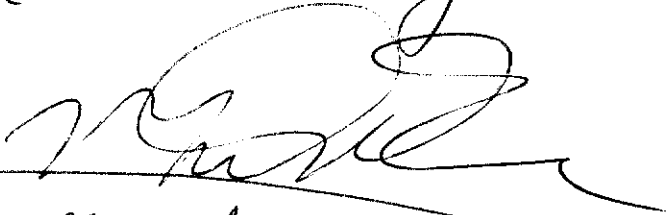
404.168. of the Social Security Act
Clearly expressing that benefits are
not payable to prisoners convicted
of a felony offense.

This concludes Exhibit
Description.

I Michael Cook hereby testify
that the foregoing is true
and correct.

Executed this 4th day of December 2007

Signature


Michael Cook

San Mateo
C J I S
MORE DATA PENDING

ORG: SO JAIL NO: _____
TRUE NAME: COOK, MICHAEL C

SMCSO ID: 1078032

JAIL NUMBER	BOOK DATE	BOOK TYPE	COURT CASE NUMBER	BAIL AMOUNT	RLSE TYPE	RLSE DATE
SO 0468196 00	04/19/02	OPE	NF320185A	0.00	CT	06/04/02
PC 422 (F); PC 243.4(D)(1) (M)						
SO 0468196 01	06/04/02	OPE	SC051612A	0.00	CU	09/09/02
PC 422 (F); PC 243.4(D)(1) (M)						
SO 0463355 00	01/11/02	OPE	NM317888A	0.00	TS	03/30/02
PC 148(A)(1) (M); PC 415.5(A)(3) (M)						
SO 0463355 01	01/12/02	OPE	SM316582A	0.00	CU	02/01/02
PC 241.1 (F); PC 664/243(B) (M)						
SO 0457204 00	09/11/01	OPE	SM314433A	0.00	TS	01/07/02
PC 240 (M); PC 242 (M)						
SO 0442957 00	11/18/00	OPE	NM307788A	0.00	TS	08/13/01
PC 242 (M)						

CONTROLLED
DOCUMENT
NOT TO BE
DUPLICATED

DON HORSLEY, SHERIFF
SAN MATEO COUNTY

NEXT FUNCTION: _____ CURR FUNCTION: IMDSPREC ID: J21298-J212981 PF1=HELP

II

»↑

0 24.17

This exhibit
clearly demonstrates
where plaintiff was
detained as a
misdemeanor pertaining to the checks mailed in Oct, Nov, Dec, 2001
HCP/PLR

Exhibit # 2 #
E-FILED 10/11/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NO. C 06 05950 RS

MICHAEL COOK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

In this action, plaintiff Michael Cook contends the Social Security Administration ("SSA") has wrongfully failed to forward to his current address certain Supplemental Security Income benefit checks that were previously mailed to him but returned as undeliverable. On August 7, 2007, the Court entered an order stating, among other things: "it could be that Cook will eventually be entitled to judicial review of any adverse determination made in the administrative proceedings. Assuming Cook meets the prerequisites for such review, he would need to file a *new* action, in compliance with the rules applicable to such proceedings. See, e.g. Local Civil Rule 16-5. In the meantime, Cook is advised that there appears to be no conceivable basis to seek further relief in this particular action, and he is strongly discouraged from filing any further 'motions,' letters, or other pleadings herein." August 17, 2007, Order at 4:1-6 (footnote omitted).

Notwithstanding this clear direction that Cook should not continue to submit papers or seek relief in this action, he has continued to do so. Most recently, Cook has submitted a letter and other documents requesting: (1) "any kind of assistance [the Court] could render" with respect to his claim that the SSA is not permitting him to exhaust his administrative remedies, and (2) that he be

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1 provided an appropriate "form" for filing a claim against a person acting under the color of state law.
2 Cook's first request is based on the fact that the SSA apparently has informed Cook that he
3 has no right to review by an Administrative Law Judge of a decision issued by the SSA on July 27,
4 2007. The SSA appears to be taking the position that because that decision *waived* SSA's right to
5 recover an asserted overpayment of \$3336.78, Cook cannot be aggrieved by the decision and there is
6 nothing left for him to appeal. It is not immediately clear whether the SSA's position that its
7 decision left nothing for Cook to challenge is tenable. The July 27, 2007 decision included a
8 finding that six specific SSI checks were returned to the SSA. In what appears to be subsequent
9 handwritten interlineations to that decision, presumably made by an SSA employee in
10 communication with Cook, the agency seems to explain further that Cook is not entitled to recover
11 any of the returned checks because he was incarcerated during the months to which those checks
12 pertain. The SSA may be correct that Cook is not entitled to those checks if he was incarcerated, but
13 it appears to be that aspect of the July 27, 2007 decision that he wished to challenge in a hearing
14 before an Administrative Law Judge. Accordingly, the fact that overpayment was *waived* in
15 connection with checks sent for certain *other* months does not appear to establish conclusively that
16 Cook could not be considered aggrieved by the decision that he is not entitled to the monies
17 represented by the checks that were returned to the SSA unnegotiated.

18 That said, Cook's request that the Court somehow compel the SSA to "permit" him to
19 "exhaust" his administrative remedies must be denied. Cook either was entitled to a hearing before
20 an Administrative Law Judge or he was not, but as a general rule, an agency that asserts a particular
21 administrative remedy is not available will not thereafter be able to argue that judicial review is
22 foreclosed solely as a result of the claimant's failure to exhaust that remedy. In other words, the
23 basis for Cook's request seems to be his contention that he is not being "allowed" to exhaust his
24 administrative remedies, but if that is true, then he likely *has* exhausted his remedies and should
25 proceed as directed in the Court's August 7, 2007 Order. Nothing in this Order, however, is a
26 finding of fact or a conclusion of law as to whether or not Cook has indeed exhausted his
27 administrative remedies.

28 Cook's second request, asking that he be provided a "form" for filing a claim against a

United States District Court
For the Northern District of California

1 person acting under the color of state law is also denied. It appears Cook has misunderstood the
2 Court's August 7, 2007 Order, which addressed a proposed complaint that Cook had submitted on a
3 form available to prisoners for bringing complaints under 42 U.S.C § 1983. The claims Cook has
4 attempted to assert in this action, although not always entirely clear, have plainly been against the
5 federal government or its employees for actions taken under the color of *federal* law. To the extent
6 Cook wants a "form" to pursue further his complaints against the SSA in connection with the
7 matters he has raised in this action, 42 U.S.C § 1983 is simply inapplicable. To the extent Cook may
8 wish to raise *other* claims, unrelated to this proceeding, against persons acting under the color of
9 state law, it is evident that he already has access to forms designed for bringing such claims.

10 Finally, Cook is hereby advised that, absent a legal obligation to act otherwise, the Court
11 intends to: (1) disregard any further letters or other documents filed by Cook in this action, whether
12 filed, marked as "received," or sent directly to chambers, and; (2) dispose of any document filed as a
13 "motion" by minute order stating only "motion denied."

14
15 IT IS SO ORDERED.

16 Dated: October 10, 2007


RICHARD SEEBORG
United States Magistrate Judge

Social Security Administration
Supplemental Security Income
 Notice of Reconsideration

SOCIAL SECURITY
 280 S FIRST ST
 ROOM 244
 SAN JOSE, CA 95113
 Claim Number: [REDACTED]-3056
 July 27, 2007
 JUL

MICHAEL COOK
 CSP SACRAMENTO
 CDC T79529
 PO BOX 290066
 REPRESA CA 95671

Reconsideration Filed:
 April 9, 2007

You filed an appeal on 04/09/07 regarding SSI returned checks when you were incarcerated. *Plaintiff was incarcerated for a misdemeanor during these months and years Mr. Plaintiff*

We have carefully reviewed your file and all the facts we have, the following SSI checks were returned to SSA: 10/01, 11/01, 12/01, 02/02, 10/02 and 11/02. *you were not due any of the above checks due to incarceration - Credited*

However, there was an ^{still} outstanding SSI overpayment in the amount of \$3336.78 due to your incarceration for the following months: 10/00, 11/00, 01/02, 05/02 and 12/02. *Due to treason*

We have decided to waive the outstanding overpayment of \$3336.78 and you do not have to pay it back.

If You Disagree With The Decision

If you disagree with this decision, you have the right to request a hearing. A person who has not seen your case before will look at it. That person is an Administrative Law Judge (ALJ). The ALJ will review your case again and look at any new facts you have before deciding your case.

- You have 60 days to ask for a hearing.
- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.

It states right in this section that I have a right to request a hearing.

See Next Page

42 USCA APP., 20 CFR Sec. 404.468, Nonpayment of benefits to prisoners

*174698 OASDI Regs, 20 CFR § 404.468, 42 U.S.C.A.App.

UNITED STATES CODE
ANNOTATED
TITLE 42. THE PUBLIC
HEALTH AND WELFARE
APPENDIX
CODE OF FEDERAL
REGULATIONS
TITLE 20--EMPLOYEES'
BENEFITS
CHAPTER III--SOCIAL
SECURITY
ADMINISTRATION
PART 404--FEDERAL OLD-
AGE, SURVIVORS AND
DISABILITY INSURANCE
(1950--)
SUBPART E--DEDUCTIONS;
REDUCTIONS; AND
NONPAYMENTS OF
BENEFITS

As amended to 02-05-07

§ 404.468. Nonpayment of benefits to prisoners

(a) General. No monthly benefits will be paid to any individual for any month any part of which the individual is confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony. This rule applies to disability benefits (§ 404.315) and child's benefits based on disability (§ 404.350) effective with benefits payable for months beginning on or after October 1, 1980. For all other monthly benefits, this rule is effective with benefits payable for months beginning on or after May 1, 1983. However, it applies only to the prisoner; benefit payments to any other person who is entitled on the basis of the prisoner's wages and self-employment income are payable as though the prisoner were receiving benefits.

(b) Felonious offenses. An offense will be

considered a felony if--

- (1) It is a felony under applicable law; or
- (2) In a jurisdiction which does not classify any crime as a felony, it is an offense punishable by death or imprisonment for a term exceeding one year.

(c) Confinement. In general, a jail, prison, or other penal institution or correctional facility is a facility which is under the control and jurisdiction of the agency in charge of the penal system or in which convicted criminals can be incarcerated. Confinement in such a facility continues as long as the individual is under a sentence of confinement and has not been released due to parole or pardon. An individual is considered confined even though he or she is temporarily or intermittently outside of that facility (e.g., on work release, attending school, or hospitalized).

*174699 (d) Vocational rehabilitation exception. The nonpayment provision of paragraph (a) of this section does not apply if a **prisoner** who is entitled to benefits on the basis of disability is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for the individual by court of law. In addition, the Commissioner must determine that the program is expected to result in the individual being able to do substantial gainful activity upon release and within a reasonable time. No benefits will be paid to the **prisoner** for any month prior to the approval of the program.

CREDIT(S)

[49 FR 48182, Dec. 11, 1984, as amended at 62 FR 38450, July 18, 1997]

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES

LIBRARY REFERENCES

American Digest System

Social Security and Public Welfare 135.1, 140.1, 140.5, 140.76.

Key Number System Topic No. 356A.

PROOF OF SERVICE

(C.C.P. §2015.5; 28 U.S.C. §1745)

I, Michael Cook, am over the age of eighteen (18) years,
and I (am) (am not) a party to the within cause of action. My address is:

CS p Sacramento
P.O. Box 29066
Represas CA 95671

On, DEC-4-07, 2007, I served the following
documents:

Motion for Reconsideration of Judgment

_____ on the
below named individuals by depositing true and correct copies thereof in the United
State mail in Represa, California, with postage fully prepaid thereon, addressed as
follows:

1. U.S. District Court
280 S First St
Room 2112
San Jose CA
95113

2. _____

I have read the above statements and declare under the penalty of perjury of
the laws of the State of California that the foregoing is true and correct.

Executed this 4th day of December 2007, at California
State Prison at Sacramento, Represa, California.

(Signature)

Declarant